International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada and its division Minneapolis-St. Paul Moving Picture Machine Operators Union Local 219, AFL–CIO, CLC (Hughes-Avicom International, Inc.) *and* Robert A. St. George. Case 18–CB–3084

February 14, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND HIGGINS

This case involves several allegations that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act by imposing full union membership requirements on certain Hughes-Avicom employees and by failing to notify them of the rights accorded them by *Communications Workers of America v. Beck*, 487 U.S. 735 (1988).[1]

The National Labor Relations Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions only to the extent consistent with this Decision and Order.

1. The Respondent represents a multilocation unit of Hughes-Avicom technicians. At all material times, a 1991–1993 collective-bargaining agreement covered unit employees. The employees involved here were technicians working at the Employer's Minneapolis base. There are no exceptions to the judge's finding that (1) Hughes-Avicom International, Inc. and the Respondent acted lawfully when they agreed that the Minneapolis employees were an accretion to the existing bargaining unit, and (2) the Respondent was legally entitled to seek their compliance with a union-security clause in the collective-bargaining agreement.

The Respondent initiated efforts to get the Minneapolis employees to become union members at a January 9, 1991 meeting.[3] All of the employees signed membership applications, but none of them paid the required initiation fee. The Respondent sent reminder letters to each employee about the initiation fee requirement on February 11, March 26, and April 12. On June 11, the Respondent sent another letter to each Minneapolis employee. This letter quoted the contractual union-security clause, stated the amount of dues and fees owed to date, and threatened to request the termination of any employee who failed to make payment by June 21. None of the Respondent's letters made any reference to *Beck* rights or to alternatives to full union membership under the union-security clause. Still, no employee paid the initiation fee.

The June 21 deadline passed without event. Representatives of the Respondent then met with the Minneapolis employees on June 26. During this meeting, one employee inquired about "ways in which we can pay for union representation in contract negotiations and still not have to join the union and pay union dues." The Respondent's representative, Davin Anderson, stated that there was no nonmember alternative available. The Respondent did not, however, make any subsequent demand that Hughes-Avicom terminate Minneapolis employees for failing to comply with the union-security provision.

The judge found that the Respondent violated Section 8(b)(1)(A) of the Act by failing to give the Minneapolis employees an explanation of *Beck* rights and by misrepresenting that no such rights existed in response to the employee question at the June 26 meeting. There are no exceptions to this finding. The judge declined to pass, however, on other *Beck* related allegations which the General Counsel made in a posthearing brief. The judge found that these allegations were "not clearly spelled out in the complaint and were not fully litigated."

The General Counsel excepts to the judge's failure to find that the Respondent violated Section 8(b)(1)(A) by attempting to enforce the union-security clause at the January 9 meeting and in the February 11, March 26, April 12, and June 11 letters without first informing employees of their *Beck* rights. For the reasons stated below, we find merit in the exceptions only with respect to the June 11 letter.

In *California Saw & Knife Works*, 320 NLRB 224 (1995), the Board interpreted and applied the Supreme Court's *Beck* decision. The Board held

> that when or before a union seeks to obligate an employee to pay fees and dues under a union-security clause, the union should inform the employee that he has the right to be or remain a nonmember and that nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections. If the em-

[1] On April 23, 1993, Administrative Law Judge William L. Schmidt issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed cross-exceptions, and a brief in support of cross-exceptions and in answer to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Drywall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] All dates are in 1991.

ployee chooses to object, he must be apprised of the percentage of the reduction, the basis for the calculation, and the right to challenge these figures. [Fn. omitted.][4]

The Board further recognized that a full statement of *Beck* rights must include an explanation of a nonmember's right to be and remain a nonmember under *NLRB v. General Motors*, 373 U.S. 734 (1963). Id. at 238 fn. 57.[5]

It is undisputed that the Respondent did not give the above-described initial notice of *Beck* rights to the newly accreted Minneapolis employees at any time. Had this case been fully litigated under a theory of violation encompassing the *California Saw* standard, we would find merit in the General Counsel's exceptions relating to all attempts to obligate those employees to pay full fees and dues under the union-security clause. We agree with the judge, however, that the complaint and the General Counsel's statement of position at the hearing expressed a more limited theory of violation, limited to imposing an affirmative duty to inform employees of their *Beck* rights at the time the Respondent specifically threatened to terminate them if they failed to join the Union.

In regard to the theory of violation actually litigated, the Respondent's June 11 letter did demand that Minneapolis employees pay union initiation fees and dues and specifically threatened to request their termination if they failed to do so. Furthermore, the complaint specifically alleged that the June 11 letter was unlawful. Accordingly, we find the facts sufficient to warrant a finding that the failure to give notice of *Beck* rights in conjunction with the June 11 letter violated Section 8(b)(1)(A) of the Act. We agree with the judge that the legality of all antecedent efforts by the Respondent to obligate Minneapolis employees to comply with the union-security clause was not fully litigated. We find no merit in the General Counsel's exceptions to the failure to find *Beck* notice violations based on these efforts.

2. The General Counsel has also excepted to the judge's failure to find that the Respondent violated Section 8(b)(1)(A) and (2) by agreeing to and enforcing a contractual provision limiting welfare and pension benefits to union members. We find merit in this exception.

Article 25 of the 1991–1993 collective-bargaining agreement provides that "the Employer shall make contributions to Union Welfare and/or Pension Funds for those employees who are members of Union locals where bona fide Welfare and/or Pension Funds exist." The judge found that this provision "literally conditions the pension benefit on union membership." Furthermore, he credited the testimony of Minneapolis employee Michael Nimz that Respondent's representative, Walter Blanchard, told him on April 17, 1991, "that the only way to get the pension was to be a union employee." Finally, the judge found that at the June 26 meeting with Minneapolis employees Respondent's representative, Davin Anderson, told employees that "you guys can't be in the pension unless you're [Union] members."

The complaint, as amended, alleged both that the Blanchard statement violated Section 8(b)(1)(A) of the Act and that the Respondent violated Section 8(b)(1)(A) and (2) by entering into and enforcing a contract provision requiring employees to become members of the Union in order to qualify for employer contributions to the pension funds. The judge found a violation with respect to the Blanchard statement. The judge did not specifically discuss the contractual pension benefit unfair labor practice allegation. In his prior discussion of the unit accretion issue and the related 8(b)(2) allegation about the Respondent's right to seek the Minneapolis employees' compliance with the union-security provision, however, he made an apparently inconsistent observation that Hughes-Avicom unilaterally failed to apply contractual pension contribution provisions to these employees and that the Respondent never acquiesced in this failure.

We find, consistent with the judge's later statement about the literal meaning of contract article 25, that the failure of Hughes-Avicom to make pension contributions on behalf of Minneapolis employees who were not union members was completely in accord with the parties' collective-bargaining agreement. The Respondent Union and the Employer thus expressly agreed to condition the receipt of pension benefits upon membership in the Union. The maintenance of a contractual provision which on its face accords preferential treatment to union members against nonmembers concerning the receipt of benefits violates Section 8(b)(1)(A) and (2) of the Act. See *Woodlawn Farm Dairy Co.*, 162 NLRB 48, 49 (1966); cf. *Teamsters Local 17 (Colorado Transfer & Storage)*, 198 NLRB 252, 254 (1972). We accordingly find that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act by entering into and maintaining a contractual provision requiring employees to become members of the Union in order to qualify for employer contributions to the pension fund.[6]

[4] 320 NLRB at 233.

[5] See also *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1995).

[6] As a remedy for this violation, we shall order the Respondent Union to cease and desist from enforcing the unlawful contract provision and to notify the Employer that it would not apply the contract discriminatorily. We find no merit in the General Counsel's argument that we should order the Respondent to make the Minneapolis employees whole for pension contributions withheld by the Employer. In a related unfair labor practice proceeding, Case 18–CA–

Continued

ORDER

The National Labor Relations Board orders that the Respondent, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, and its division Minneapolis-St. Paul Moving Picture Machine Operators Union Local 219, AFL–CIO, CLC, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to notify unit employees, when first seeking to obligate them to pay fees and dues under a union-security clause, of their right to be and remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

(b) Representing to the Minneapolis-based employees of Hughes-Avicom in the bargaining unit represented by the Respondent that they must become union members in order to obtain pension benefits under the collective-bargaining agreement applicable to them.

(c) Maintaining any provision in its collective-bargaining agreement with Hughes-Avicom International, Inc., which requires membership by employees in the Respondent Union as a condition for participation in pension benefit funds.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify the Minneapolis-based employees of Hughes-Avicom of their right to be or remain nonmembers; and of the rights of nonmembers under *Beck*, supra, to object to paying for union activities not germane to the union's duties as bargaining agent, and to obtain a reduction in fees for such activities. In addition, this notice must include a description of any internal union procedures for filing objections.

(b) Notify Hughes-Avicom International, Inc. that the Respondent Union will not enforce or otherwise give effect to the provision in the collective-bargaining agreement which requires membership by employees in the Respondent Union as a condition for the participation in the pension benefit trust.

(c) Within 14 days after service by the Region, post at its offices and meeting hall in Minneapolis, Minnesota, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members and employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return to the Regional Director sufficient copies of the notice for posting by Hughes-Avicom International, Inc., if willing, at all places where notices to its Minneapolis employees are customarily posted.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to notify unit employees, when we first seek to obligate them to pay fees and dues under a union-security clause, of their right to be and remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

11802, the General Counsel and Hughes-Avicom entered into a settlement agreement providing that, during the pendency of the instant case, Hughes-Avicom would withdraw recognition from the Respondent Union as representative of the Minneapolis employees and would not impose the terms and conditions of the contract on them. This agreement effectively barred even a nondiscriminatory application of the contract's pension fund contribution provisions to Minneapolis employees. We find that it would be impermissibly punitive in such circumstances to require the Respondent Union to make pension fund contributions that the General Counsel has barred Hughes-Avicom from making itself until the accretion issue was resolved in this proceeding.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT represent to the Minneapolis-based employees of the Hughes-Avicom International, Inc. bargaining unit that they must become union members in order to obtain pension benefits under the collective-bargaining agreement applicable to them.

WE WILL NOT maintain any provision in our collective-bargaining agreement with Hughes-Avicom, which requires membership by employees in the Respondent Union as a condition for participation in pension benefit funds.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify the Minneapolis-based employees of Hughes-Avicom in writing of their right to be or remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, supra, to object to paying for union activities not germane to the union's duties as bargaining agent, and to obtain a reduction in fees for such activities. In addition, this notice will include a description of any internal union procedures for filing objections.

WE WILL notify Hughes-Avicom that we will not enforce or otherwise give effect to the provision in the collective-bargaining agreement which requires membership by employees in our union as a condition for the participation in the pension benefit trust.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA AND ITS DIVISION MINNEAPOLIS-ST.PAUL MOVING PICTURE MACHINE OPERATORS UNION LOCAL 219, AFL–CIO, CLC

A. Marie Simpson, Esq., for the General Counsel.
Ira L. Gotlieb, Esq. and *Leo Geffner, Esq., (Taylor, Roth, Bush, & Geffner)*, on the brief, of Los Angeles, California, for the Respondent.
Robert A. St. George, pro se, of St. Paul, Minnesota, for the Charging Party.
T. Warren Jackson, Esq., for Hughes Corporation, of Los Angeles, California, for the Party-in-Interest.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. I heard this matter on December 18 and 19, 1991, at Minneapolis, Minnesota. It arises from an unfair labor practice charge filed by Robert A. St. George against International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, and its division Minneapolis-St. Paul Moving Picture Machine Operators Union Local 219, AFL–CIO, CLC (Respondents or Union collectively, or IATSE and Local 219 separately) on June 20, 1991. Thereafter, the charge was amended on August 19, 1991, and again on August 29, 1991.

On August 29, 1991, the Regional Director for Region 18 of the National Labor Relations Board (NLRB or the Board) issued a complaint alleging Respondent had engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act). The complaint incorporated a notice of hearing before an administrative law judge.

Respondent answered the complaint on September 6, 1991, denying that it engaged in the unfair labor practices alleged.

At the hearing, I granted the motion of Hughes-Avicom International, Inc. (Avicom or the Company) to intervene as a Party in Interest based on its collective-bargaining agreement with Respondent and the significance of that agreement to the issues involved.

After carefully considering the record, the demeanor of the witnesses, and the posthearing briefs of the General Counsel and Respondents, I find Respondents engaged in certain unfair labor practices based on the following

FINDINGS OF FACT

I. ALLEGED UNFAIR LABOR PRACTICES

A. *An Overview*

The central question presented is whether Avicom's employees at its Minneapolis base, established in late 1989, are an accretion to a 25-year-old multilocation unit represented by Respondents. The General Counsel contends the Minneapolis employee are not an accretion to the preexisting unit; Respondents claim they are. If they are not, then IATSE rather clearly violated Section 8(b)(2) by securing Avicom's agreement to apply their contract which contains a union-security clause to the Minneapolis employees. And, if they are not, Local 219 agent, Darvin Anderson, likely violated Section 8(b)(1)(A) of the Act by threatening to cause the termination of any Minneapolis employee who refused to join the Union pursuant to the contractual union-security provision.

The General Counsel also alleges and argues that Respondent violated Section 8(b)(1)(A) because it failed to advise the Minneapolis employees "of their rights to be financial core members" obliged to pay only that amount of dues and fees associated with the costs of representation. Furthermore, the General Counsel charges that Respondents violated Section 8(b)(1)(A) because IATSE representative, Walter Blanchard, told Minneapolis employee Michael Nimz that he had to be a union member in order to participate in a contractual pension plan.

On these latter issues, Respondents assert that it has no affirmative duty, absent an inquiry by an employee, to specifically inform employees of their more limited membership and financial obligations even where a union-security agreement exists. In addition, Respondents contend that the allegation about Nimz, first made at the hearing, is time barred but, if not, it is not supported by credible evidence.

B. *Facts*

1. Background

Avicom, a California corporation, headquartered in Glendora, California, maintains an office and place of business at

Mendota Heights, Minnesota (a Minneapolis-St. Paul suburb near the airport serving those cities), the location where the unfair labor practices in this proceeding are alleged to have occurred.[1] Avicom sells and services passenger entertainment and cabin management systems utilized by major air carriers. This enterprise, originally founded by the Bell & Howell Company and later spun off in the late 1970s or early 1980s, was acquired by the Hughes Aircraft Company in June 1990.

Avicom employs a number of technicians throughout the world who service aircraft passenger cabin video systems pursuant contracts with various air carriers. It now maintains facilities in eight major United States cities: Chicago, Dallas-Fort Worth, Honolulu, Los Angeles, Minneapolis-St. Paul, Miami, New York, and San Francisco where full-time technicians are employed to perform in-shop (bench) and on-board service and repairs.[2] In addition, it employs on-call technicians in four other cities, Boston, Raleigh-Durham, St. Louis, and Washington, D.C. At the time of the hearing, Avicom employed 71 full-time technicians and 14 on-call technicians in the United States.[3]

Avicom's policies are centrally formulated and executed by its headquarters executives. Financial, marketing, engineering, personnel, and labor relations functions are performed almost exclusively at Glendora. Moreover, base operations are closely controlled and coordinated principally though the director of field services who is located at Glendora. This is achieved primarily through a telephone conference on each Monday, Wednesday, and Friday. Participants always include the base managers, the field services' director, and any other Glendora executives or professionals who have business to transact with the bases around the country.

The technicians located at all Avicom domestic bases perform "essentially" the same job functions employing similar, if not identical, procedures. Because Avicom's work is subject to Federal Aviation Administration guidelines, Avicom maintains uniform work policies and repair operations at all bases. Each base must operate in accord with Avicom's uniform operations manual which provides instructions for performing equipment inspections and paperwork preparation required for compliance under FAA and air carrier requirements.

All technicians are trained to follow the uniform procedures required by Avicom's operations manual when: (1) a new base is opened; (2) new equipment is introduced; and (3) new contracts are obtained calling for work not previously performed. When a base is first opened and no experienced technician is permanently transferred to that new location, a technician from an existing base is typically reassigned to the new base temporarily in order to train the newly hired technicians. For example, when the Minneapolis base opened, a Chicago technician spent approximately 6 months there training the first three Minneapolis technicians. New equipment training, by contrast, is usually conducted at the California headquarters.

All payroll, personnel, and grievance processing work is done at Glendora. Hiring and discharge decisions are made in Glendora although they are obviously executed by the base managers. Uniform work rules applicable to all domestic bases have been established and are updated from time to time from Glendora.

For well over 20 years, Avicom has recognized Respondent as the collective-bargaining representative of all technicians employed in the United States and Canada. During this period, Respondent and Avicom maintained a series of 3-year collective-bargaining agreements applicable to the full-time, temporary and on-call technicians at "all the airports and/or other locations in the United States and Canada." Typically, changes from one agreement to the next were negotiated late in a contract's final year so that a successor agreement could be executed early the following year.

When the Union was first recognized, the Company maintained service bases employing technicians at Chicago, Los Angeles, New York, and San Francisco. In 1982, the Company opened the Honolulu service base and subsequent agreements were applied to that location. Three new service bases were opened at Dallas-Ft. Worth, Miami, and Minneapolis-St. Paul in 1987 or 1988. It is clear that the bases at Dallas and Minneapolis were opened well after after the 1988–1990 collective-bargaining agreement was negotiated and executed. The situation at Miami is less clear. Director of Field Services Curt Glover could recall only that the Miami base was established in 1987 or 1988 but he did acknowledge that the Union was never notified when any of these three bases were opened. No evidence establishes that the Union became aware that these three bases existed until negotiations for the 1991–1993 agreement were about to commence.

When the parties negotiated a successor agreement in the fall and winter of 1990, they agreed that these three newer bases were covered by the terms of their collective-bargaining agreement. This action met with resistance by employees at Minneapolis when Local 219 representative Anderson, on instruction of IATSE, attempted to procure union membership applications pursuant to the union-security clause in the agreement.

2. Establishment of the Minneapolis base

For some unspecified period of time prior to November 1988, the Avicom performed repaired video equipment for Northwest Airlines on a job-by-job basis. This work was primarily performed at the Avicom's Chicago base after it had been removed from Northwest's aircraft and shipped to Chicago. During this period, Avicom performed no on-board services for Northwest.

In mid-October 1988, Avicom and Northwest entered into an 18-month service agreement providing for both bench and on-board services and repairs to be performed at Avicom bases in Chicago, Los Angeles, San Francisco, and Minneapolis. In addition, this service agreement called for the

[1] Avicom's direct inflow to its Minnesota operations for the 1990 calendar year exceed the dollar volume standard established by the Board for exercising its statutory jurisdiction. I find that jurisdiction to resolve this labor dispute lies with the Board.

[2] The term "technician" as used here encompasses four work classifications specified in the collective-bargaining agreement, to wit, field service technician, senior service technician, utility service technician and computer service technician. These contractual distinctions are of no significance to this decision.

[3] Avicom also employs individuals classified as technical representatives at a Boeing facility in Seattle and at an American Airline facility in Tulsa. However, the uncontradicted evidence shows that these three individuals do not perform unit work and are not regarded as a part of the unit.

performance of on-board maintenance at New York, Boston, and Honolulu as well as emergency services at all seven locations. Avicom had established bases at all these locations except Minneapolis.

As Northwest obviously anticipated that a considerable portion of the work would be done in Minneapolis, its home base, Avicom moved quickly to open a base in Minneapolis. To this end, Chicago base manager, Fred Bouni, was dispatched to Minneapolis in early November 1988 to set up an operations there. Bouni advertised for new technicians and interviewed about 30 to 40 applicants.

In mid-November, he employed three individuals, Mark Kemplin, Nimz, and St. George, to work at the new Minneapolis base. Robert Hickey, a Chicago technician, was temporarily assigned to Minneapolis for a 6-month period to train them. No further employees were hired at Minneapolis until October 1990 when three more technicians were employed. Bouni continued to serve as the manager at both Chicago and Minneapolis until a separate manager for the Minneapolis base was hired in May 1991.

During job interviews, Bouni told the applicants that the Company was a union shop but, as the positions were temporary, the Company would waive the requirement that the employees join the Union immediately. However, according to Bouni, the applicants were told that if the Company's contract with Northwest were renewed at the end of the original 18-month period, they would probably be required to join the Union.[4] In addition, Bouni described the Company's benefits for the applicants from a list he prepared by reviewing the collective-bargaining agreement.

No evidence indicates that the Union was ever consulted concerning the union membership "waiver" described by Bouni or ever agreed to such a condition. On the contrary, the responsible union official first learned of the Minneapolis base in late 1990. Blanchard, the IATSE official who has negotiated and administered Avicom agreements since 1982, said that Jim Lewis, the Union's steward at San Francisco and the IATSE local union business representative there, told him shortly prior to the commencement of the negotiations for the 1991–1993 agreement that Lewis was "aware of the fact or suspected" that new bases had been opened in Minneapolis and Dallas/Fort Worth. Blanchard asserted that he was offended because the Company had not notified him of these openings. Regardless, no one from the Union contacted the Minneapolis technicians about joining the Union, or vice versa, until more that 2 years after the initial employees were hired.

On November 1, 1990, Blanchard sent Company President Richard Bertagna a list of proposed modifications to the collective-bargaining agreement which served to kick off negotiations. Item 13 on that list provided: "Insure that all technician employees of the company are covered by this agreement (i.e., Minneapolis and Dallas/Fort Worth)."

[4] Bouni's reference to the Minneapolis positions as "temporary" during these initial job interviews seemingly is explained by the fact that Avicom had encountered considerable difficulty securing the Northwest account. Avicom officials, for whatever reason, treated the initial 18-month service agreement as a very shaky undertaking. In fact, however, the service agreement was renewed for an addition 18-month period and Avicom was awarded a separate contract to install new video equipment in other Northwest aircraft.

The Company and union representatives met for the first face-to-face negotiations on November 28, 1990. Glover, one of the Avicom representatives present for this session, testified that the Union asserted during the meeting that the Company's bases at Dallas/Fort Worth, Miami, and Minneapolis were already covered under the existing collective-bargaining agreement because of its geographical scope clause. The Company's notes of that meeting, shared with the Union, reflect the following initial resolution of the contractual geographic scope question as it pertained to Dallas/Fort Worth and Minneapolis:

> Insure that all technician employees of the Company are covered by this agreement (i.e. Minneapolis and Dallas/Fort Worth). Walter Blanchard stated that a person had to pay initiation fee and some other dues to cover administration of the union paper work even if they elect not to be members of the union.
>
> (A) AVICOM shall instruct the employees that they should contact the union and the union is responsible for informing the employee of union dues and initiation fee.

Shortly after this meeting Glover directed Robert Pressimore, Avicom's central region manager at the time, to notify the IATSE local union business representatives in Dallas/Fort Worth, Miami, and Minneapolis of the company operations in their jurisdiction. Pressimore notified the union agents in Dallas and Minneapolis on December 4 and the agent in Miami on December 6. Thereafter, Pressimore prepared a memo to his superiors reporting his actions. In his memo, Pressimore expressed his opinion "that a majority of our employees at any given location would have to vote in favor of joining the union." Up to this point, Glover said that it was his understanding that if a technician worked in the United States or Canada, they were required to join the Union.

Glover testified that at the second bargaining session, there was further discussion about the Company notifying the IATSE local unions so they could speak to the employees in Dallas/Fort Worth, Miami, and Minneapolis. He also claims that there was a discussion concerning the effect of the right-to-work laws in Florida and Texas on this issue.

A second Blanchard-to-Bertagna letter dated December 13, 1990, lists what Blanchard believed to be the agreed-on and outstanding issues to that point in the negotiations. Under the items listed as "Agreed Modification to Contract" is the following: "Insure that all employees in the bargaining unit are members of the union and that the union is informed of new hires." From the evidence here, this problem only existed at Dallas, Miami, and Minneapolis.

According to Glover, the remainder of the bargaining sessions were held in 1991 and included only Blanchard and Bertagna. On January 4, 1991, Bertagna wrote to Blanchard forwarding a list of company counter-proposals which included the following:

> All employees at Minneapolis, Dallas and Miami to be excluded from the Agreement effective January 1, 1991. Beginning January 1, 1991, this Agreement will not be applicable to an AVICOM employees located at a U.S. airport not presently served by AVICOM.

Both Glover and Blanchard agree that the Union rejected this company proposal. According to Blanchard, Bertagna eventually agreed that the new agreement applied to the Dallas, Miami, and Minneapolis bases. The 1991–1993 agreement was concluded and ratified in April 1991, and executed on May 21, 1991. By its terms, the new agreement was retroactive to January 1, 1991.

3. Local 219 and the Minneapolis employees

Following Pressimore's call, Anderson contacted employees at the Minneapolis base and arranged to meet with them on January 8. During this meeting, all of the Minneapolis employees signed union membership applications but only two or three paid the $50 processing fee and none appear to have paid the $300 initiation fee.

Subsequently, several of the employees began to have second thoughts about joining the Union and none followed up by promptly paying the initiation fee. On February 11, Anderson sent the Minneapolis employees a reminder concerning the fees and urged them to pay as soon as possible "[s]ince we refer our members to Employers in the order of seniority as to the date of membership in our Local." When that letter failed to produce the desired result, Anderson sent further reminders on March 26 and April 12. In the March 26 letter, Anderson asserted that "[u]nder the collective bargaining agreement . . . all employees are required to become members *within 30 days* or they shall be dismissed upon demand from the Union." (Emphasis added.)

In April, Nimz discussed the union situation with Bouni who made it clear that the Company's president would not hesitate to discharge employees who refused to become union members. Bouni also provided Nimz with Blanchard's telephone number and suggested that Nimz speak with Blanchard about the benefits offered by the Union.

Nimz succeeded in reaching Blanchard on April 17 and the two men spoke for some time about the benefits contained in the collective-bargaining agreement. During their discussion, Nimz claims, Blanchard asserted to him "that the only way to get the pension was to be a union employee." Blanchard denied Nimz' claim asserting, in essence, that he knew better.

Matters were finally brought to a head in mid-June when Anderson wrote to each Minneapolis employee about their obligation to pay dues and fees to Local 219. Anderson quoted the union security clause from the collective-bargaining agreement, in haec verba, listed the amount of dues and fees due to that date, and threatened to request the addressee's termination by Avicom if the delinquent dues and fees remained unpaid by noon, June 21. Obviously, Anderson's June letters led to the filing of the present charge.

Anderson and Ron Kuharski, also a Local 219 representative, held a lengthy meeting on June 26 with the Minneapolis employees covering a wide range of issues all related to the IATSE representation of Avicom's employees. During the meeting, employee Kenneth Powers reported that he had heard during his contacts with the NLRB Regional Office that "there are ways in which we can pay for union representation in contract negotiations and still not have to join the union and pay union dues. Anderson told Powers that was only possible in the so-called "right-to-work" states but not in Minnesota. Anderson also told the employees at one point in this wide-ranging discussion that "you guys can't be in the pension unless you're [Union] members."

At the conclusion of the June 26 meeting, Anderson volunteered to refrain from demanding their discharge as long as his dialogue with the employees was ongoing. To date the Union has made no demand that Avicom terminate any Minneapolis employees for failing to comply with the union-security provision.

C. *Further Findings and Conclusions*

1. The accretion issue

Accretion, the Board has observed, is merely the addition of new employees to an already existing group or unit of employees.[5] Generally, the Board does not favor unit additions by means of accretion because of its reluctance to deprive employees of their right of self-determination in the selection of a collective-bargaining representative.

In the *United Parcel Service*,[6] the Board summed up its "restrictive [accretion] policy" as follows:

> One aspect of this restrictive policy has been to permit accretion only in certain situations where *new groups of employees* have come into existence after a union's recognition or certification or during the term of a collective-bargaining agreement. If the new employees have such common interests with members of an existing bargaining unit that the new employees would, if present earlier, have been included in the unit or covered by the current contract, then the Board will permit accretion in furtherance of the statutory objective of promoting labor relations stability. [Emphasis in original; citation omitted.]

Using this formulation, I am persuaded that the Minneapolis operation is an accretion to the existing bargaining unit.

The first element of the *United Parcel* formulation is clearly present here. The Minneapolis base came into existence in mid-term of the 1988–1990 collective-bargaining agreement. After learning of its existence, the Union acted promptly to secure the inclusion of the Minneapolis employees. Avicom readily agreed that the Minneapolis employees should be included in the unit on the basis of the geographic scope clause and its brief effort later to remove the new bases from the nationwide unit was quickly abandoned.

As for the second element—whether or not the community of interest between the existing unit and the Minneapolis employees is sufficient to warrant the conclusion that the latter would have been "included in the unit or covered by the current contract" if they would have been present when the unit or the collective bargaining contract came into existence—an affirmative response is required. To hold otherwise would sanction the unit exclusion of a small employee group almost totally devoid of any separate autonomy.

In determining whether a new facility or operation is an accretion, the Board weighs several factors including integration of operations, centralization of managerial and administrative control, geographic proximity, similarity of working conditions, skills and functions, and common control of labor

[5] *Gould, Inc.*, 263 NLRB 442, 445 (1982).

[6] 303 NLRB 326, 327 (1991).

relations and interchangeability of employees.[7] In so doing, the Board seeks to "balance the right of employees to select their own bargaining agent against the concomitant statutory objective of maintaining established stable labor relations."[8]

Important to the conclusion here is the fact that the parties from the outset intended to establish a multilocation unit. The rationale underlying their fundamental decision are obvious; and equally obvious is the potential disruption which could result from a segmented collective-bargaining relationship. Consequently, any conclusion at this late date which overrides this basic consideration should be based on some compelling circumstance.

No such compelling circumstance is present; on the contrary, most factors favor an accretion finding. Avicom is a highly integrated operation exhibiting a considerable degree of centralized administration, direction and control designed to achieve almost total uniformity in its field operations regardless of location. The primary elements of control include: (1) the detailed field service manual specifying precise procedures and paperwork the technicians are expected to perform; (2) introductory employee training by experienced technicians from other locations or at its California headquarters; (3) the triweekly conference calls conducted by the director of field services with all base managers designed to coordinate activities nationwide; and (4) the exclusive control of personnel and labor relations policy details at the headquarters level.

The separate Avicom bases are vested only with limited autonomy even under ordinary circumstances. At relevant times, Minneapolis was even less autonomous than the other bases. For over 2-1/2 years—even beyond the time the Union and Avicom agreed to its inclusion in the overall unit—the Minneapolis base existed essentially as a satellite of the Chicago base. Both bases shared common supervision and Minneapolis personnel were trained by Chicago employees.

Only two factors—the separate location and the lack of significant employee interchange or transfer—appear at first blush to support the General Counsel's position. However, the importance of these two factors is mitigated by the nature of this industry and the work involved. To illustrate, it is conceivable that video equipment aboard a Northwest flight originating on any given day in New York could be given a routine maintenance check by Avicom employees there, on-board troubleshooting and repair by employees in Chicago, and complete removal for bench repairs by employees in Minneapolis, all before noon, and vice versa.

Even though some of the bench work Avicom performed for Northwest was moved from Chicago to Minneapolis after the latter base became functional, the service agreements between Avicom and Northwest by no means contemplate that the Northwest work will be performed exclusively in Minneapolis. On the contrary, Northwest is now entitled to the same work performance at any of five Avicom locations as well as in-flight equipment monitoring by an Avicom employee from any location where appropriate. Consequently, where, as here, the unit work floats from base to base on a continuous basis with an expectation that uniform procedures will be applied throughout the system, employee interchange and base location lack force as factors which should be accorded significant weight.[9]

The General Counsel's assertions that the Union failed to claim other locations as they were established and that the contractual benefits have not been applied uniformly at all bases needs little discussion. All that has been established here is that Avicom has been less than forth coming in notifying the Union when new bases have been opened. As the Union learned of new base locations, it moved diligently to insure the inclusion of those new locations in the overall unit. Hence, to the extent that the General Counsel is arguing that the parties have explicitly or implicitly agreed to exclude certain Avicom bases from coverage of the collective-bargaining agreement, that argument has no factual support.

To the extent that contractual pension benefit contributions may not have been made for employees at the three new full-time locations, that shortcoming likewise cannot be attributed to any mutual agreement. On the contrary, even if no pension contributions have been made for employees at the three recently established locations, fault appears to lie at Avicom's doorstep for unilaterally applying some but not all contractual provisions. Certainly, no proof exists that the Union ever acquiesced in the failure to apply all terms to all locations.

At the hearing, the General Counsel also implied that employees at the on-call bases have never been included in the unit. As the collective-bargaining agreement explicitly shows—and as Glover's testimony reinforces—any such claim lacks merit. Seemingly, the General Counsel based this assertion on the fact—disputed by no one—that the on-call employees do not receive the full range of benefits full-time employees receive. However, the collective-bargaining agreement unquestionably establishes that on-call employees receive higher wages when actually employed than many full-time employees. Such variations in wages and benefits, presumably grounded on legitimate differences in working conditions, cannot be construed as evidence that on-call employees have been excluded from the unit.

For the foregoing reasons, I find that Avicom and the Union acted lawfully when they agreed in late 1990 that the Minneapolis employees were appropriately a part of the existing nationwide unit. Accordingly, the Union was legally entitled to seek compliance by the Minneapolis employees with the union-security provision in the collective-bargaining agreement. Therefore, I recommend that the 8(b)(2) allegation be dismissed.

2. Attempts to enforce union security

Above all else, this case illustrates the confusion often associated with employee obligations under union-security agreements. Over the years, legally sanctioned union-security arrangements have been condemned in some quarters as a compulsory union membership schemes which fly in the face of the right of free association protected by our constitution. Others defend them as legitimate mechanisms obliging irresponsible free-loaders otherwise inclined to sponge from

[7] *Great A & P Tea Co.*, 140 NLRB 1011, 1021 (1963).

[8] *Gould*, supra.

[9] Only the accretion issue at Minneapolis was fully litigated in this proceeding. However, General Counsel was permitted to introduced evidence pertaining to Dallas and Miami to shed light on the Minneapolis situation. That evidence reflects that some employees transferred from the original bases to Dallas and Miami when operations commenced at those locations.

their coworkers to pay their fair share of the costs required for collectively bargained benefits. Undoubtedly, many shop floor laypersons on both sides of this chasm must view the venture through the relevant statutory provisions, interpretative decisions, and permissible contractual language pertaining to this topic as an Orwellian newspeak nightmare.

Section 7 of the Act establishes certain fundamental employee rights. Among them is the right to "form, join, or assist" unions or to "refrain from any or all such activities."

Section 8 of the Act seeks to assure the free exercise of employee Section 7 rights by declaring certain employer and union conduct to be unfair labor practices. Thus, Section 8(a)(3) outlaws employer discrimination against employees "to encourage or discourage membership in any [union]." However, a proviso to Section 8(a)(3) allows an employer and an unassisted union selected by the majority of the employees to "mak[e] an agreement . . . to require as a condition of employment membership [in the union]" on or after an employee's 30th day of employment or the effective date of the agreement, whichever is later. Absent this proviso, union-security arrangements would unquestionably run afoul of the union-motivated employer discrimination banned by Section 8(a)(3). But even the union-security proviso is limited by other Section 8(a)(3) provisos prohibiting employer discrimination under the aegis of a lawful union-security agreement where the employer has reason to believe that "membership" is not available to the employee on the same terms generally applicable to others, or that "membership" was "denied" or "terminated" for reasons other than the failure to tender periodic dues and initiation fees uniformly required of all members. And Section 14(b) of the Act permits the states to enact laws (popularly known as "right-to-work" laws) barring union-security agreements altogether notwithstanding Section 8(a)(3).

Section 8(b)(2) is the union corollary to Section 8(a)(3). It prohibits union efforts to "cause or attempt to cause an employer to discriminate against an employee in violation of [Section 8](a)(3) or to discriminate against an employee with respect to whom [union] membership . . . has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

In the *General Motors* case,[10] the Supreme Court held that the term "membership," as used in the 8(a)(3) provisos and in Section 8(b)(2), has been "whittled down to its financial core." In plain words, *General Motors* means that employees need never become real union members in order to comply with any lawful union-security arrangement; instead, employees can satisfy the "membership" requirements of a union-security agreement simply by paying those dues and fees uniformly required of all members. The import of this holding is that employees can satisfy union membership obligations arising from their employment relationship without being subject to the range of regulation and discipline typically contained in a union's constitution and bylaws.[11]

Subsequently in the *Beck* case,[12] the Supreme Court narrowed the "membership" obligation sanctioned by Section 8(a)(3) even further. The "financial core" obligation, the Court held, is limited only to those "union activities . . . germane to collective bargaining, contract administration, and grievance adjustment." In other words, if an employee is required to become a union "member" pursuant to a union security provision in a collective bargaining agreement, the employee now need not become either a real union member or pay the full amount of "the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership (in the union)."[13]

Section 8(b)(1)(A) declares that it is an unfair labor practice for a union to "restrain or coerce . . . employees in the exercise their Section 7 rights." Union's which overreach in their attempts to apply union-security provisions usually violate this proscription.

In her brief counsel for the General Counsel's argues that Anderson's response to Powers' June 26 specific inquiry about alternatives to union membership violated the Union's duty to truthfully inform employees of those alternatives. Respondent argues that Anderson merely misunderstood the question posed by Powers.

I find Anderson's response to Powers that no alternative existed in Minnesota to actual union membership violated Section 8(b)(1)(A). This is especially true where, as here, the Union had already served Powers and the other employees present with letters threatening to seek their termination for failing to comply with the union-security agreement with Avicom. In this context, Anderson's misrepresentation—both as to employee rights under *General Motors* and *Beck*—would have a clear tendency to unlawfully restrain any reasonable person from exercising their Section 7 right to refrain from actually becoming a member of the Union or refraining from paying amounts designed to support the full range of union activities.[14]

Even if it is assumed that Anderson did not comprehend the question, the situation is not altered materially. In either case, his response would reasonably create the impression among employees that they must actually become members of the Union and pay its full dues and fees in order remove the threat to their employment posed by his letters to them earlier that month.

The Union also argues that no duty to explain Beck rights arose in this case as no employee ever objected to the amount of dues and fees the Union sought to charge here. I disagree. Powers' June 26 question to Anderson, when considered in the context of the latter's exchanges with the Minneapolis employees over the prior 6 months, suffices as an objection. Hence, even under its theory, Anderson had a duty to explain employee *Beck* rights.

[10] *NLRB v. General Motors Corp.*, 373 U.S. 734, 742 (1963).

[11] For example, a union could not fine the so-called financial core member for working during an strike. On the other hand, a union can bar financial core members from meetings held to transact union business including the ratification of the very collective-bargaining agreement containing the union-security clause compelling union membership of one kind or another.

[12] *Communication Workers v. Beck*, 487 U.S. 735 (1988).

[13] Worse yet, I am sure, from the viewpoint of those unions which vigorously defend their statutory right "to prescribe [their] own rules with respect to the acquisition or retention of membership," we now routinely employ generic membership fictions such as "full union members" and "financial core members" when we really mean "union members" and "nonmembers obliged to pay an agency fee," respectively.

[14] *United Stanford Employees Local 680 (Leland Stanford Junior University)*, 232 NLRB 326 (1977).

Counsel for the General Counsel's brief incorporates other sweeping allegations, which in my judgment, are not clearly spelled out in the complaint and were not fully litigated. Thus, she asserts that the union-security provision is unlawful because it requires "union membership" rather than "financial core" membership; that all of Anderson's membership solicitations were unlawful for the same reason; and that Anderson, in effect, had an obligation to preface even a solicitation of "financial core" membership with the further explanation that this involved no more than the payment of those dues and fees associated with representation as required by *Beck*.

Not surprisingly, Respondent's brief fails to address these other claims now made by the General Counsel; plainly Respondent was never given notice that such issues were at stake in this proceeding. I find these other matters beyond the scope of the complaint and hearing. Accordingly, I decline to address those questions for that reason.

3. The Blanchard–Nimz exchange

The General Counsel contends that Blanchard's remarks to Nimz during their April 17 conversation are coercive under Section 8(b)(1)(A) because they amount to a straightforward requirement that employees must be a local union member in order to receive the contractual pension benefits. This statement attributed to Blanchard by Nimz only affirms, the General Counsel argues, clear language in the collective-bargaining agreement and is almost identical to the remark later uttered by Anderson to all of the employees at the June 26 meeting.

Respondent argues that this allegation should be dismissed under *Nickles Bakery*[15] and its progeny because it is not factually related to the underlying charge and, hence, it was inappropriate for me to permit the complaint to be amended at the hearing to include this issue. In addition, Respondent argues that Nimz became even more disgruntled with the Union following his discharge by Avicom and, accordingly, I should not credit the pension fund remarks Nimz attributes to Blanchard.

Even assuming that the *Nickles Bakery* rationale applies to 8(b)(1)(A) cases, I am satisfied that there is a close factual nexus between the language of the charge, and its two amendments, and this allegation. Thus, the original charge alleges that Respondents had "restrained and coerced employees . . . by forcing or requiring them to join the union." This language was maintained in all subsequent amendments and is sufficient to support the Nimz allegation.

The Nimz allegation in the complaint is little more than a factual specification as to the means or devices employed by the Union to—paraphrasing the charge—force or require employees to join the Union. Put another way, the Nimz allegation graphically describes the conduct generally alluded to in the charge and its amendments. Accordingly, I find the charge supports the complaint allegation. I decline to dismiss this allegation on the ground that Nimz' account lacks credibility. Quite to the contrary, the contract itself—negotiated by Blanchard—literally conditions the pension benefit on union membership. This alone lends considerable support to Nimz' version and detracts considerably from Blanchard's assertion that he knew better. One can reasonably ask if Blanchard, in fact, really knew better why is the contract worded as it is. Furthermore, the fact that Anderson made a similar remark 2 months later strongly supports the conclusion which I have reached that the extremely dangerous illusion (from the perspective of potential financial liability) that contractual benefits can be conditioned on union membership permeates this Union. Accordingly, I find Blanchard violated Section 8(b)(1)(A) by telling Nimz that he had to be a union member in order to receive the contractual pension benefit.

[15] *Nickles Bakery of Indiana*, 296 NLRB 927 (1989).

CONCLUSIONS OF LAW

1. Avicom is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondents are labor organizations within the meaning of Section 2(5) of the Act.

3. By representing that Avicom employees must become actual members of the Union and pay the full amount of dues and fees charged to union members in order to satisfy the requirements of its union-security agreement with Avicom, and by representing to employees that they must become union members in order to be eligible for pension benefits under its collective-bargaining agreement with Avicom, Respondents engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. Respondents did not engage in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

5. The unfair labor practices of Respondents affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondents have engaged in certain unfair labor practices, the recommended order requires them to cease and desist therefrom and to take the following affirmative action designed to effectuate the policies of the Act.

Where, as here, Powers' June 26 request went unanswered and serves as the basis for one of the violations, the recommended Order requires Respondents, before undertaking any further efforts to enforce the union-security provision of the collective-bargaining agreement with Avicom among that Company's Minneapolis employees, to notify those employees in writing of the minimum amount of dues and fees necessary to legally satisfy the requirements of membership imposed by that union-security provision. In accord with *Beck*, this minimum amount shall include only those amounts necessary to cover the costs of collective bargaining, contract administration, and grievance adjustment. In addition, Respondents must post the attached notice at its offices and meeting locations and make signed copies available for posting by Avicom.

[Recommended Order omitted from publication.]